

Federal Government within 24 months from the date of the request for waiver, either directly or through a dealer, or who have submitted an offer on a solicitation for that class of products within that time frame.

(d) *Class of products* is an individual subdivision within a four-digit Industry Number as established by the Office of Management and Budget in the SIC Manual.

§ 121.1303 When will a waiver of the Nonmanufacturer Rule be granted for an individual contract?

An individual waiver for a product in a specific solicitation will be approved when the SBA Associate Administrator for Government Contracting reviews and accepts a contracting officer's determination that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specifications of a solicitation, including the period of performance.

§ 121.1304 What are the procedures for requesting and granting waivers?

(a) *Waivers for classes of products.* (1) SBA may, at its own initiative, examine a class of products for possible waiver of the Nonmanufacturer Rule.

(2) Any interested person, business, association, or Federal agency may submit a request for a waiver for a particular class of products. Requests should be addressed or hand-carried to the Associate Administrator of Government Contracting, Small Business Administration, 409 3rd Street S.W., Washington, D.C.

(3) Requests for a waiver of a class of products need not be in any particular form, but should include a statement of the class of products to be waived, the applicable SIC code, and detailed information on the efforts made to identify small business manufacturers or processors for the class.

(4) If SBA decides that there are small business manufacturers or processors in the Federal procurement market, it will deny the request for waiver, issue notice of the denial, and provide the names, addresses, and telephone numbers of the sources found. If SBA does not initially confirm the existence of small business manufacturers or processors in the Federal market, it will:

(i) Publish notices in the Commerce Business Daily and the Federal Register seeking information on small business manufacturers or processors, announcing a notice of intent to waive the Nonmanufacturer Rule for that class of products and affording the public a 15-day comment period; and

(ii) If no small business sources are identified, publish a notice in the

Federal Register stating that no small business sources were found and that a waiver of the Nonmanufacturer Rule for that class of products has been granted.

(5) An expedited procedure for issuing a class waiver may be used for emergency situations, but only if the contracting officer provides a determination to the Associate Administrator for Government Contracting that the procurement is proceeding under the authority of FAR (48 CFR 6.302-2 for "unusual and compelling urgency," or provides a determination materially the same as one of unusual and compelling urgency. Under the expedited procedure, if a small business manufacturer or processor is not identified by a PASS search, the SBA will grant the waiver for the class of products and then publish a notice in the Federal Register. The notice will state that a waiver has been granted, and solicit public comment for future procurements.

(6) The decision by the Associate Administrator for Government Contracting to grant or deny a waiver is the final decision by the Agency.

(7) A waiver of the Nonmanufacturer Rule for classes of products has no specific time limitation. SBA will, however, periodically review existing class waivers to the Nonmanufacturer Rule to determine if small business manufacturers or processors have become available to participate in the Federal market for the waived classes of products and the waiver should be terminated.

(i) Upon SBA's receipt of evidence that a small business manufacturer or processor exists in the Federal market for a waived class of products, the waiver will be terminated by the Associate Administrator for Government Contracting. This evidence may be discovered by SBA during a periodic review of existing waivers or may be brought to SBA's attention by other sources.

(ii) SBA will announce its intent to terminate a waiver for a class of products through the publication of a notice in the Federal Register, asking for comments regarding the proposed termination.

(iii) Unless public comment reveals that no small business manufacturer or process in fact exists for the class of products in question, SBA will publish a final Notice of Termination in the Federal Register.

(b) *Individual waivers for specific solicitations.* (1) A contracting officer's request for a waiver of the Nonmanufacturer Rule for specific solicitations need not be in any

particular form, but must, at a minimum, include:

(i) A definitive statement of the specific item to be waived and justification as to why the specific item is required;

(ii) The solicitation number, SIC code, dollar amount of the procurement, and a brief statement of the procurement history;

(iii) A determination by the contracting officer that there are no known small business manufacturers or processors for the requested items (the determination must contain a narrative statement of the contracting officer's efforts to search for small business manufacturers or processors of the item and the results of those efforts, and a statement by the contracting officer that there are no known small business manufacturers for the items and that no small business manufacturer or processor can reasonably be expected to offer the required items); and

(iv) For contracts expected to exceed \$500,000, a copy of the Statement of Work.

(2) Requests should be addressed to the Associate Administrator for Government Contracting, Small Business Administration, 409 3rd Street, S.W., Washington, D.C. 20416.

(3) SBA will examine the contracting officer's determination and any other information it deems necessary to make an informed decision on the individual waiver request. If SBA's research verifies that no small business manufacturers or processors exist for the item, the Associate Administrator for Government Contracting will grant an individual, one-time waiver. If a small business manufacturer or processor is found for the product in question, the Associate Administrator will deny the request. Either decision represents a final decision by SBA.

§ 121.1305 How is a list of previously granted class waivers obtained?

A list of classes of products for which waivers of the Nonmanufacturer Rule have been granted will be maintained in SBA's Procurement Automated Source System (PASS). A list of such waivers may also be obtained by contacting the Office of Government Contracting at the Small Business Administration, Washington, D.C. 20416, or at the nearest SBA Government Contracting Area Office.

Dated: November 11, 1995.

Philip Lader,
Administrator.

[FR Doc. 95-28449 Filed 11-22-95; 8:45 am]

BILLING CODE 8025-01-P

13 CFR Part 123**Disaster Loan Program**

AGENCY: Small Business Administration.
ACTION: Proposed rule.

SUMMARY: In response to President Clinton's regulatory review directive, the Small Business Administration has completed a page-by-page and line-by-line review of its regulations. As a result, SBA is proposing to clarify and streamline its regulations, revising or eliminating any duplicative, outdated, inconsistent or confusing provisions. This proposed rule would reorganize the entire regulation 123 covering the disaster loan program to make it more clear and easier to use.

DATES: Comments must be submitted on or before December 26, 1995.

ADDRESSES: Written comments should be addressed to David R. Kohler, Regulatory Reform Initiative Team Leader (123), Small Business Administration, 409 Third Street, SW., Suite 13, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Bernard Kulik, Associate Administrator for Disaster Assistance, at (202) 205-6734.

SUPPLEMENTARY INFORMATION: Part 123 of Chapter I, 13 CFR contains policies governing the eligibility of disaster victims to obtain low-cost loans to restore their damaged property to its pre-disaster condition. This proposed rule would reorganize the entire Part 123 to make it more clear and easier to use. It would eliminate references to disasters which occurred years ago, and it would eliminate Subpart D—Persian Gulf Troop Deployment Economic Injury Loans because the authority for that loan program has expired. A conversion table follows:

Existing section	Action	New section
123.1	Revise	123.1
123.2	Revise	123.101
123.3	Revise	123.3, 123.4, 123.5, 123.10, 123.101
123.4	Revise	123.5
123.5	Delete	
123.6	Revise	123.8
123.7	Revise	123.3
123.8	Delete	
123.9	Revise	123.101, 123.104, 123.105
123.10	Delete	
123.11	Revise	123.11
123.12	Revise	123.13
123.13	Revise	123.16, 123.104
123.14	Revise	123.101

Existing section	Action	New section
123.15	Delete	
123.16	Delete	
123.17	Revise	123.201
123.18	Revise	123.12
123.19	Revise	123.9
123.20	Delete	
123.21	Revise	123.100, 123.200
123.22	Revise	123.3
123.23	Revise	123.3
123.24	Revise	123.6, 123.7, 123.12, 123.101, 123.105, 123.106, 123.107, 123.201, 123.202
123.25	Revise	123.15, 123.105
123.26	Revise	123.202, 123.203
123.27	Delete	
123.28	Revise	123.202
123.29	Delete	
123.40	Delete	
123.41	Revise	123.14, 123.301, 123.302, 123.303
123.60-69	Delete	

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this rule does not have a significant economic impact on a substantial number of small entities within the meaning of Executive Order 12866, or the Regulatory Flexibility Act, 5 U.S.C. 601, et seq.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule contains no new reporting or recordkeeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule has no federalism implications warranting preparation of the federalism assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects in 13 CFR Part 123

Disaster assistance, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

Accordingly, pursuant to the authority set forth in sections 5(b)(6), 7(b)(1), and 7(c)(6) of the Small Business Act, SBA hereby proposes to revise Part 123 of Title 13 of the Code of Federal Regulations to read as follows:

PART 123—DISASTER LOAN PROGRAM**Overview****Sec.**

- 123.1 What do these rules cover?
 123.2 What are disaster loans and disaster declarations?
 123.3 How are disaster declarations made?
 123.4 What is a disaster area and why is it important?
 123.5 What kinds of loans are available?
 123.6 What does SBA look for when considering a disaster loan applicant?
 123.7 Are there restrictions on how disaster loans can be used?
 123.8 Does SBA charge any fees for obtaining a disaster loan?
 123.9 What happens if I don't use loan proceeds for the intended purpose?
 123.10 What happens if I cannot use my insurance proceeds to make repairs?
 123.11 Does SBA require collateral for any of its disaster loans?
 123.12 Are books and records required?
 123.13 What happens if my loan application is denied?
 123.14 Application of the Federal Debt Collection Procedures Act of 1990.
 123.15 What if I change my mind?
 123.16 Loan Administration and Servicing.
 123.17 Application of Federal requirements relating to flood insurance, environmental considerations, and other matters.

Home Disaster Loans

- 123.100 Am I eligible to apply for a home disaster loan?
 123.101 When am I not eligible to apply for a home disaster loan?
 123.102 What circumstances would justify my relocating?
 123.103 What happens if I am forced to move from my home?
 123.104 What interest rate will I pay on my home disaster loan?
 123.105 How much can I borrow with a home disaster loan and what limits apply on use of funds and repayment terms apply?
 123.106 What is eligible refinancing?
 123.107 What is mitigation?

Physical Disaster Business Loans

- 123.200 Am I eligible to apply for a physical disaster business loan?
 123.201 When am I not eligible to apply for a physical disaster business loan?
 123.202 How much can my business borrow with a physical disaster business loan?
 123.203 What interest rate will my business pay on a physical disaster business loan and what are the repayment terms?

Economic Injury Disaster Loans

- 123.300 Is my business eligible to apply for an economic injury disaster loan?
 123.301 When would my business not be eligible to apply for an economic injury disaster loan?
 123.302 What is the interest rate on an economic injury disaster loan?
 123.303 How can my business spend my economic injury disaster loan?

Authority: 15 U.S.C. 634(b)(6), 636(b), 636(c) and 636(f); Pub. L. 102-395, 106 Stat. 1828, 1864; and Pub. L. 103-75, 107 Stat. 739.

Overview

§ 123.1 What do these rules cover?

This part covers the disaster loan programs authorized under the Small Business Act, 15 U.S.C. 636(b), (c), and (f). Since SBA cannot predict the occurrence or magnitude of disasters, it reserves the right to change these rules, without advance notice, by publishing interim emergency regulations in the Federal Register.

§ 123.2 What are disaster loans and disaster declarations?

SBA offers low interest, fixed rate loans to disaster victims, enabling them to repair or replace property damaged or destroyed in declared disasters. It also offers such loans to affected small businesses to help them recover from economic injury caused by such disasters. Disaster declarations are official notices recognizing that specific geographic areas have been damaged by floods and other acts of nature, riots, civil disorders, or industrial accidents such as oil spills. These disasters are sudden events which cause severe physical damage, and do not include slower physical occurrences such as shoreline erosion or gradual land settling. Sudden physical events that cause substantial economic injury may be disasters even if they do not cause physical damage to a victim's property. Past examples include ocean conditions causing significant displacement (major ocean currents) or closure (toxic algae blooms) of customary fishing waters, as well as contamination of food or other products for human consumption from unforeseeable and unintended events beyond the control of the victims.

§ 123.3 How are disaster declarations made?

(a) There are four ways in which disaster declarations are issued which make SBA disaster loans possible:

(1) The President declares a Major Disaster and authorizes Federal assistance, including individual assistance (temporary housing and Individual and Family Grant Assistance).

(2) SBA makes a physical disaster declaration, based on the occurrence of at least a minimum amount of physical damage to buildings, machinery, equipment, inventory, homes and other property. Such damage usually must meet the following tests:

(i) In any county or other smaller political subdivision of a State or U.S.

possession, at least 25 homes or 25 businesses, or a combination of at least 25 homes, businesses, or other eligible institutions, must each sustain uninsured losses of 40 percent or more of the estimated fair replacement value or pre-disaster fair market value of the damaged property, whichever is lower; or

(ii) In any such political subdivision, at least three businesses each sustain uninsured losses of 40 percent or more of the estimated fair replacement value or pre-disaster fair market value of the damaged property, whichever is lower, and, as a direct result of such physical damage, 25 percent or more of the work force in their community would be unemployed for at least 90 days; and

(iii) The Governor of the State in which the disaster occurred submits a written request to SBA for a physical disaster declaration by SBA (OMB Approval No. 3245-0121). This request should be delivered to the SBA Disaster Area Office serving the region where the disaster occurred within 60 days of the date of the disaster.

(3) SBA makes an economic injury disaster declaration in response to a determination of a natural disaster by the Secretary of Agriculture.

(4) SBA makes an economic injury declaration in reliance on a state certification that at least 5 small business concerns in a disaster area have suffered substantial economic injury as a result of the disaster and are in need of financial assistance not otherwise available on reasonable terms. The state certification must be signed by the Governor, must specify the county or counties or other political subdivisions in which the disaster occurred, and must be delivered (with supporting documentation) to the servicing SBA Disaster Area Office within 120 days of the disaster occurrence.

(b) SBA publishes notice of any disaster declaration in the Federal Register. The published notice will identify the kinds of assistance available, the date and nature of the disaster, and the deadline and location for filing loan applications. SBA will accept applications after the announced deadline only when SBA determines that the late filing resulted from substantial causes essentially beyond the control of the applicant. Additionally, SBA will use the local media to inform potential loan applicants where to obtain loan applications and otherwise to assist victims in applying for disaster loans.

§ 123.4 What is a disaster area and why is it important?

Each disaster declaration defines the geographical areas affected by the disaster. Only those victims located in the declared disaster area are eligible to apply for SBA disaster loans. When the President declares a major disaster, the Federal Emergency Management Agency defines the disaster area. In major disasters, economic injury disaster loans may be made for victims in contiguous counties or other political subdivisions. Disaster declarations issued by the Administrator of SBA include contiguous counties for both physical and economic injury assistance. Contiguous counties or other political subdivisions are those land areas which abut the land area of the declared disaster area without geographic separation other than by a minor body of water, not to exceed one mile between the land areas of such counties.

§ 123.5 What kinds of loans are available?

SBA offers three kinds of disaster loans: physical disaster home loans, physical disaster business loans, and economic injury business loans. SBA makes these loans directly or in participation with a financial institution. If a loan is made in participation with a financial institution, SBA's share in that loan may not exceed 90 percent.

§ 123.6 What does SBA look for when considering a disaster loan applicant?

There must be reasonable assurance that you can repay your loan out of your personal or business cash flow, and you must have satisfactory credit and character. SBA will not make a loan to you if repayment depends upon the sale of collateral through foreclosure or any other disposition of assets owned by you. SBA is prohibited by statute from making a loan to you if you are engaged in the production or distribution of any product or service that has been determined to be obscene by a court.

§ 123.7 Are there restrictions on how disaster loans can be used?

You must use disaster loans to restore or replace your primary home (including a mobile home used as primary residence) and your personal or business property as nearly as possible to their condition before the disaster occurred, and within certain limits, to protect damaged or destroyed real property from possible future similar disasters.

§ 123.8 Does SBA charge any fees for obtaining a disaster loan?

SBA does not charge points, closing, or servicing fees on any disaster loan.

You will be responsible for payment of any closing costs owed to third parties, such as recording fees and title insurance premiums. Also, if your loan is made in participation with a financial institution, SBA will charge a guaranty fee to the financial institution and the financial institution may recover the guaranty fee from you.

§ 123.9 What happens if I don't use loan proceeds for the intended purpose?

(a) When SBA approves each loan application, it issues a loan authorization which specifies the amount of the loan, repayment terms, any collateral requirements, and the permitted use of loan proceeds. If you wrongfully misapply these proceeds, you will be liable to SBA for one and one-half times the proceeds disbursed to you as of the date SBA learns of your wrongful misapplication. Wrongful misapplication means the willful use of any loan proceeds without SBA approval contrary to the loan authorization. If you fail to use loan proceeds for authorized purposes for 60 days or more after receiving a loan disbursement check, such non-use also is considered a wrongful misapplication of the proceeds.

(b) If SBA learns that you may have misapplied your loan proceeds, SBA will notify you at your last known address, by certified mail, return receipt requested. You will be given at least 30 days to submit to SBA evidence that you have not misapplied the loan proceeds or that you have corrected any such misapplication. Any failure to respond in time will be considered an admission that you misapplied the proceeds. If SBA finds a wrongful misapplication, it will cancel any undisbursed loan proceeds, call the loan, and begin collection measures to collect your outstanding loan balance and the civil penalty. You may also face criminal prosecution.

§ 123.10 What happens if I cannot use my insurance proceeds to make repairs?

If you must pay insurance proceeds to the holder of a recorded lien or encumbrance against your damaged property instead of using them to make repairs, you may apply to SBA for the full amount needed to make such repairs. If you voluntarily pay insurance proceeds to a recorded lienholder, your loan eligibility is reduced by the amount of the voluntary payment.

§ 123.11 Does SBA require collateral for any of its disaster loans?

Generally, SBA will not require that you pledge collateral to secure a disaster home loan or a physical disaster business loan of \$10,000 or less, or an

economic injury disaster loan of \$5,000 or less. For loans larger than these amounts, you will be required to provide available collateral such as a lien on the damaged or replacement property, a security interest in personal property, or both.

(a) Sometimes a borrower, including affiliates as defined in Part 121 of this chapter, will have more than one loan after a single disaster. In deciding whether collateral is required, SBA will add up all physical disaster loans to see if they exceed \$10,000 and all economic injury disaster loans to see if they exceed \$5,000.

(b) SBA will not decline a loan if you lack a particular amount of collateral as long as it is reasonably sure that you can repay your loan. If you refuse to pledge available collateral when requested by SBA, however, SBA may decline or cancel your loan.

§ 123.12 Are books and records required?

You must retain complete records of all transactions financed with your SBA loan proceeds, including copies of all contracts and receipts, for a period of 3 years after you receive your final disbursement of loan proceeds. If you have a physical disaster business or economic injury loan, you must also maintain current and accurate books of account, including financial and operating statements, insurance policies, and tax returns. You must retain applicable books and records for 3 years after your loan matures including any extensions, or from the date when your loan is paid in full, whichever occurs first. You must make available to SBA or other authorized government personnel upon request all such books and records for inspection, audit, and reproduction during normal business hours and you must also permit SBA and any participating financial institution to inspect and appraise your assets. (OMB Approval No. 3245-0110.)

§ 123.13 What happens if my loan application is denied?

(a) If SBA denies your loan application, SBA will notify you in writing and set forth the specific reasons for the denial. Any applicant whose request for a loan is declined for reasons other than not being a small business (size) has the right to present information to overcome the reason or reasons for the denial and to request reconsideration. (OMB Approval No. 3245-0122.)

(b) Any decline due to size can only be appealed as set forth in Part 121 of this chapter.

(c) Any request for reconsideration must be in writing and must be delivered to the SBA office that declined the original application within six months of the date of the notice of the denial. After six months, a new loan application is required.

(d) A written request for reconsideration must contain all significant new information that you rely on to overcome SBA's denial of your original loan application. Your request for reconsideration of a business loan application must also be accompanied by current business financial statements.

(e) If SBA declines your application a second time, you have the right to appeal to the Area Director's Office. All appeals must be in writing and be received by the office that processed and declined the prior reconsideration within 30 days of the decline action. Your request must state that you are appealing, and must contain your written justification for believing that the decline action should be reversed.

(f) The decision of the Area Director is final unless:

(1) The Area Director does not have authority to approve the requested loan;

(2) The Area Director refers the matter to the Associate Administrator for Disaster Assistance; or

(3) The Associate Administrator for Disaster Assistance, upon a showing of special circumstances, requests the Area Director's office to forward the matter to him or her for final consideration. Special circumstances may include, but are not limited to, policy considerations, alleged improper acts by SBA personnel or others in processing the application, and conflicting policy interpretations between two Area Offices.

§ 123.14 Application of the Federal Debt Collection Procedures Act of 1990.

(a) Under the Federal Debt Collection Procedures Act of 1990 (28 U.S.C. 3201(e)), a debtor who owns property which is subject to an outstanding judgment lien for a debt owed to the United States is generally not eligible to receive physical and economic injury disaster loans. The SBA Associate Administrator for Disaster Assistance, or designee, may waive this restriction against receiving disaster loans upon a demonstration of good cause. Good cause means a written representation by you under oath which convinces SBA that:

(1) The declared disaster was a major contributing factor to the delinquency which led to the judgment lien, regardless of when the original debt was incurred; or

(2) The disaster directly prevented you from fulfilling the terms of an agreement with SBA or any other Federal Government entity to satisfy its pre-disaster judgment lien; in this situation, the judgment creditor must certify to SBA that you were complying with the agreement to satisfy the judgment lien when the disaster occurred; or

(3) Other circumstances exist which would justify a waiver.

(b) The waiver determination by the Associate Administrator for Disaster Assistance, or designee, is a final, non-appealable decision. The granting of a waiver does not include loan approval; a waiver recipient must then follow normal loan application procedures.

§ 123.15 What if I change my mind?

If SBA required you to pledge collateral for your loan, you may change your mind and rescind your loan pursuant to the Consumer Credit Protection Act, 15 U.S.C. 1601, and Regulation Z of the Federal Reserve Board, 12 CFR Part 226. Your note and any collateral documents signed by you will be canceled upon your return of all loan proceeds and your payment of any interest accrued.

§ 123.16 Loan Administration and Servicing.

(a) If you obtained your disaster loan from a participating lender, that lender is responsible for closing and servicing your loan. If you obtained your loan directly from SBA, your loan will be closed and serviced by SBA. The SBA rules on servicing are found in part 120 of this chapter.

(b) If you are unable to pay your SBA loan installments in a timely manner for reasons substantially beyond your control, you may request that SBA suspend your loan payments, extend your maturity, or both.

§ 123.17 Application of Federal requirements relating to flood insurance, environmental considerations, and other matters.

As a condition of disbursement, you must be in compliance with certain requirements relating to flood insurance, lead-based paint, earthquake hazards, coastal barrier islands, and child support obligations, as set forth in §§ 120.170 through 120.175 of this chapter.

Home Disaster Loans

§ 123.100 Am I eligible to apply for a home disaster loan?

(a) You are eligible to apply for a home disaster loan if you:

(1) Own and occupy your primary residence and have suffered a physical

loss to your primary residence, personal property, or both; or

(2) Do not own your primary residence, but suffered a physical loss to your personal property. Family members residing in the same household are eligible if they are not dependents of the owners of the residence.

(b) Losses may be claimed only by the owners of the property at the time of the disaster, and all such losses will be verified by SBA. SBA will consider beneficial ownership as well as legal title (for real or personal property) in determining who suffered the loss.

§ 123.101 When am I not eligible for a home disaster loan?

You are not eligible for a home disaster loan if:

(a) You have been convicted, during the past year, of a felony during and in connection with a riot or civil disorder or other declared disaster;

(b) You acquired voluntarily more than a 50 percent ownership interest in the damaged property after the disaster, and no contract of sale existed at the time of the disaster;

(c) Your damaged property can be repaired or replaced with the proceeds of insurance, gifts or other compensation, including condemnation awards (with one exception, these amounts must either be deducted from the amount of the claimed losses or, if received after SBA has approved and disbursed a loan, must be paid to SBA as principal payments on your loan. You must notify SBA of any such recoveries collected after receiving an SBA disaster loan (OMB Approval No. 3245-0124). The one exception applies to the Individual and Family Grant Program of the Federal Emergency Management Agency solely to meet an emergency need pending processing of an SBA loan. In such an event, you must repay the financial assistance with SBA loan proceeds if it was used for purposes also eligible for an SBA loan);

(d) SBA determines that you assumed the risk (for example, by not maintaining flood insurance as required by an earlier SBA disaster loan when the current loss is also due to flood);

(e) Your damaged property is a secondary home (although if you rented the property out before the disaster and the property would not constitute a "residence" under the provisions of Section 280A of the Internal Revenue Code, you may be eligible for a physical disaster business loan);

(f) Your damaged property is the type of vehicle normally used for recreational purposes, such as motorhomes, aircraft, and boats;

(g) Your damaged property consists of cash or securities;

(h) The replacement value of your damaged personal property is extraordinarily high and not easily verified, such as the value of antiques, artworks, or hobby collections;

(i) You or other principal owners of the damaged property are presently incarcerated, or on probation or parole following conviction for a serious criminal offense;

(j) Your only interest in the damaged property is in the form of a security interest, mortgage, or deed of trust;

(k) The damaged building, including contents, was newly constructed or substantially improved on or after February 9, 1989, and (without a significant business justification) is located seaward of mean high tide or entirely in or over water; or

(l) You voluntarily decide to relocate outside the business area in which the disaster has occurred, and there are no special or unusual circumstances leading to your decision (Business area means the municipality which provides general governmental services to your damaged home or, if not located in a municipality, the county or equivalent political entity in which your damaged home is located).

§ 123.102 What circumstances would justify my relocating?

SBA may approve a loan if you intend to relocate outside the business area in which the disaster has occurred if your relocation is caused by such special or unusual circumstances as:

(a) Demonstrable risk that the business area will suffer future disasters;

(b) A change in employment status (such as loss of job, transfer, lack of adequate job opportunities within the business area or scheduled retirement within 18 months after the disaster occurs);

(c) Medical reasons; or

(d) Special family considerations which necessitate a move outside of the business area.

§ 123.103 What happens if I am forced to move from my home?

If you must relocate inside or outside the business area because local authorities will not allow you to repair your damaged property, SBA considers this to be a total loss and a mandatory relocation. In this case, your loan would be an amount that SBA considers sufficient to replace your residence at your new location, plus funds to cover losses of personal property and eligible refinancing.

§ 123.104 What interest rate will I pay on my home disaster loan?

If you can obtain credit elsewhere, your interest rate is set by a statutory formula, but will not exceed 8 percent per annum. If you cannot obtain credit elsewhere, your interest rate is one-half the statutory rate, but will not exceed 4 percent per annum. Credit elsewhere means that, with your cash flow and disposable assets, SBA believes you could obtain financing from non-federal sources on reasonable terms. If you cannot obtain credit elsewhere, you also may be able to borrow from SBA to refinance existing recorded liens against your damaged real property. Under prior legislation, some SBA disaster loans had split interest rates. On any such loan, repayments of principal are applied first to that portion of the loan with the lowest interest rate.

§ 123.105 How much can I borrow with a home disaster loan and what limits apply on use of funds and repayment terms?

(a) For all disasters occurring on or after October 26, 1993, there are limits on how much money you can borrow for particular purposes:

- (1) \$40,000 for repair or replacement of household and personal effects;
- (2) \$200,000 for repair or replacement of a primary residence (including upgrading in order to meet minimum standards of safety and decency or current building code requirements). Repair or replacement of landscaping and/or recreational facilities can not exceed \$5,000;
- (3) \$200,000 for eligible refinancing purposes; and
- (4) 20 percent of the loan amount (not including refinancing) up to a maximum of \$48,000 for mitigation.

(b) You may not use loan proceeds to repay any debts on personal property, secured or unsecured, unless you incurred those debts as a direct result of the disaster.

(c) SBA determines the loan maturity and repayment terms based on your needs and your ability to pay. Generally, you will pay equal monthly installments of principal and interest, beginning five months from the date of the loan, as shown on the Note securing the loan. SBA will consider other payment terms if you have seasonal or fluctuating income, and SBA may allow installment payments of varying amounts over the first two years of the loan. The maximum maturity for a home disaster loan is 30 years. There is no penalty for prepayment of home disaster loans.

§ 123.106 What is eligible refinancing?

(a) If your home (primary residence) is totally destroyed or substantially

damaged, and you do not have credit elsewhere, SBA may allow you to borrow money to refinance recorded liens or encumbrances on your home. Your home is totally destroyed or substantially damaged if it has suffered uninsured or otherwise uncompensated damage which, at the time of the disaster, is either:

- (1) 40 percent or more of the home's market value or replacement cost at the time of the disaster, including land value, whichever is less; or
 - (2) 50 percent or more of its market value or replacement cost at the time of the disaster, not including land value, whichever is less.
- (b) Your home disaster loan for refinancing existing liens or encumbrances cannot exceed an amount equal to the lesser of \$200,000, or the physical damage to your primary residence after reductions for any insurance or other recovery.

§ 123.107 What is mitigation?

Mitigation means specific measures taken by you to protect against recurring damage in similar future disasters. Examples include retaining walls, sea walls, grading and contouring land, relocating utilities and modifying structures. The money that you can borrow for mitigation is limited to the lesser of the cost of mitigation, or 20 percent of your loan to repair or replace your damaged primary residence and personal property. SBA will not accept a request for a loan increase for mitigation filed after final disbursement of your original loan unless you can show that your request was late because of substantial reasons beyond your control.

Physical Disaster Business Loans**§ 123.200 Am I eligible to apply for a physical disaster business loan?**

(a) Almost any business concern or charitable or other non-profit entity whose real or tangible personal property is damaged in a declared disaster area is eligible to apply for a physical disaster business loan. Your business may be a sole proprietorship, partnership, corporation, limited liability company, or other legal entity recognized under State law. Your business' size (average annual receipts or number of employees) is not taken into consideration in determining your eligibility for a physical disaster business loan. If your damaged business occupied rented space at the time of the disaster, and the terms of your business' lease require you to make repairs to your business' building, you may have suffered a physical loss and can apply for a physical business disaster loan to

repair the property. In all other cases, the owner of the building is the eligible loan applicant.

(b) Damaged vehicles, of the type normally used for recreational purposes, such as motorhomes, aircraft, and boats, may be repaired or replaced with SBA loan proceeds if you can submit evidence that the damaged vehicles were used in your business at the time of the disaster.

§ 123.201 When am I not eligible to apply for a physical disaster business loan?

(a) You are not eligible for a physical disaster business loan if your business is an agricultural enterprise or if you fit into any of the categories in § 123.101. Agricultural enterprise means a business primarily engaged in the production of food and fiber, ranching and raising of livestock, aquaculture and all other farming and agriculture-related industries.

(b) Sometimes a damaged business is engaged in both agricultural and non-agricultural business activities. If the primary business activity of your damaged business is not an agricultural enterprise, you may apply for a physical disaster business loan, but loan proceeds may not be used, directly or indirectly, for the benefit of your agricultural enterprises, even if they also suffered damage.

(c) If your business is going to relocate voluntarily outside the business area in which the disaster occurred, you are not eligible for a physical disaster business loan. If, however, the relocation is due to uncontrollable or compelling circumstances, SBA will consider the relocation to be involuntary and eligible for a loan. Such circumstances may include, but are not limited to:

(1) The elimination or substantial decrease in the market for your products or services, as a consequence of the disaster;

(2) A change in the demographics of your business area within 18 months prior to the disaster, or as a result of the disaster, which makes it uneconomical to continue operations in your business area;

(3) A substantial change in your cost of doing business, as a result of the disaster, which makes the continuation of your business in the business area not economically viable;

(4) Location of your business in a hazardous area such as a special flood hazard area or an earthquake-prone area;

(5) A change in the public infrastructure in your business area which occurred within 18 months or as a result of the disaster that would result in substantially increased expenses for your business in the business area;

(6) Your implementation of decisions adopted and at least partially implemented within 18 months prior to the disaster to move your business out of the business area; and

(7) Other factors which undermine the economic viability of your business area.

§ 123.202 How much can my business borrow with a physical disaster business loan?

(a) Disaster business loans, including both physical disaster and economic injury loans to the same borrower, together with its affiliates, cannot exceed the greater of the uncompensated physical loss and economic injury or \$1.5 million. Physical disaster loans may include amounts to meet current building code requirements. If your business is a major source of employment, SBA may waive the \$1.5 million limitation. A major source of employment is a business concern which has one or more locations in the disaster area which:

(1) Employed 10 percent or more of the entire work force within the commuting area of a geographically identifiable community (no larger than a county), provided that the commuting area does not extend more than 50 miles from such community; or

(2) Employed 5 percent of the work force in an industry within the disaster area and, if the concern is a non-manufacturing concern, employed no less than 50 employees in the disaster area, or if the concern is a manufacturing concern, employed no less than 150 employees in the disaster area; or

(3) Employed no less than 250 employees within the disaster area.

(b) SBA will consider waiving the \$1.5 million loan limit only if:

(1) Your damaged location or locations are out of business or in imminent danger of going out of business as a result of the disaster, and a loan in excess of \$1.5 million is necessary to reopen or keep open the damaged locations in order to avoid substantial unemployment in the disaster area; and

(2) You have used all reasonably available funds from your business, its affiliates and its principal owners (20% or greater ownership interest) and all available credit elsewhere (as described in Section 123.104) to alleviate your physical damage and economic injury.

(c) Physical disaster business borrowers may request refinancing of liens on both damaged real property and machinery and equipment, but for an amount reduced by insurance or other compensation. To do so, your business

property must be totally destroyed or substantially damaged, which means:

(1) 40 percent or more of the aggregate value (lesser of market value or replacement cost at the time of the disaster) of the damaged real property (including land) and damaged machinery and equipment; or

(2) 50 percent or more of the aggregate value (lesser of market value or replacement cost at the time of the disaster) of the damaged real property (excluding land) and damaged machinery and equipment.

(d) Loan funds allocated for repair or replacement of landscaping or recreational facilities may not exceed \$5,000 unless the landscaping or recreational facilities fulfilled a functional need or contributed to the generation of business.

§ 123.203 What interest rate will my business pay on a physical disaster business loan and what are the repayment terms?

(a) SBA will announce interest rates with each disaster declaration. If your business, together with its affiliates and principal owners, have credit elsewhere, your interest rate is set by a statutory formula, but will not exceed 8 percent per annum. If you do not have credit elsewhere, your interest rate will not exceed 4 percent per annum. The maturity of your loan depends upon your repayment ability but cannot exceed 3 years if you have credit elsewhere. Otherwise, the maximum maturity is 30 years.

(b) Generally, you must pay equal monthly installments, of principal and interest, beginning five months from the date of the loan as shown on the Note. SBA will consider other payment terms if you have seasonal or fluctuating income, and SBA may allow installment payments of varying amounts over the first two years of the loan. There is no penalty for prepayment for disaster loans.

Economic Injury Disaster Loans

§ 123.300 Is my business eligible to apply for an economic injury disaster loan?

(a) If your business is located in a declared disaster area, and suffered substantial economic injury as a direct result of a declared disaster, you are eligible to apply for an economic injury disaster loan.

(1) Substantial economic injury is such that a business concern is unable to meet its obligations as they mature or to pay its ordinary and necessary operating expenses.

(2) Loss of anticipated profits or a drop in sales is not considered

substantial economic injury for this purpose.

(b) Economic injury disaster loans are available only if you were a small business (as defined in part 121 of this chapter) when the declared disaster commenced, you and your affiliates and principal owners (20% or more ownership interest) have used all reasonably available funds, and you are unable to obtain credit elsewhere (as described in § 123.104).

(c) Eligible businesses do not include agricultural enterprises, but do include—

(1) Small nurseries affected by a drought disaster designated by the Secretary of Agriculture (nurseries are commercial establishments deriving 50 percent or more of their annual receipts from the production and sale of ornamental plants and other nursery products, including, but not limited to, bulbs, florist greens, foliage, flowers, flower and vegetable seeds, shrubbery, and sod);

(2) Small agricultural cooperatives; and

(3) Producer cooperatives.

§ 123.301 When would my business not be eligible to apply for an economic injury disaster loan?

Your business is not eligible for an economic disaster loan if you fit into any of the categories in §§ 123.101 and 123.201, or if your business is:

(a) Engaged in gambling, lending, multi-level sales distribution, loan packaging, speculation, or investment (except for real estate investment with property held for rental when the disaster occurred);

(b) A non-profit or charitable concern;

(c) A consumer or marketing cooperative; or

(d) Not a small business concern.

§ 123.302 What is the interest rate on an economic injury disaster loan?

Your economic injury loan will have an interest rate of 4 percent per annum or less.

§ 123.303 How can my business spend my economic injury disaster loan?

(a) You can only use the loan proceeds for working capital necessary to carry your concern until resumption of normal operations and for expenditures necessary to alleviate the specific economic injury, but not to exceed that which the business could have provided had the injury not occurred.

(b) Loan proceeds may not be used to:

(1) Refinance indebtedness which you incurred prior to the disaster event; or

(2) Make payments on loans owned by another federal agency (including SBA)

or a Small Business Investment Company licensed under the Small Business Investment Act; or

(3) Pay, directly or indirectly, any obligations resulting from a federal, state or local tax penalty as a result of negligence or fraud, or any non-tax criminal fine, civil fine, or penalty for non-compliance with a law, regulation, or order of a federal, state, regional, or local agency or similar matter; or

(4) Repair physical damage; or

(5) Pay dividends or other disbursements to owners, partners, officers or stockholders, except for reasonable remuneration directly related to their performance of services for the business.

Dated: November 11, 1995.

Philip Lader,
Administrator.

[FR Doc. 95-28450 Filed 11-22-95; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95-ASO-25]

Proposed Establishment of Class E Airspace; Stuart, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Stuart, FL. GPS RWY 11 and GPS RWY 29 Standard Instrument Approach Procedures (SIAP's) have been developed for Witham Field. Controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate these SIAP's and for instrument flight rules (IFR) operations at Witham Field. The operating status of the airport will change from VFR to include IFR operations concurrent with publication of these SIAP's.

DATES: Comments must be received on or before January 5, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 95-ASO-25, Manager, System Management Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305-5586.

FOR FURTHER INFORMATION CONTACT:

Benny L. McGlamery, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5570.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95-ASO-25." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch, ASO-530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Stuart, FL. GPS RWY 11 and GPS RWY 29 SIAP's have been developed for Witham Field. Controlled airspace extending upward from 700 feet AGL is needed to accommodate these SIAP's and for IFR operations at Witham Field. The operating status of the airport will change from VFR to include IFR operations concurrent with publication of these SIAP's. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959-1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation